

United States Senate

WASHINGTON, DC 20510

November 15, 2017

Gen. James N. Mattis (ret)
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Mattis:

The recent tragedy in Texas has raised serious questions about cooperation between the military justice system and the Federal Bureau of Investigation (FBI) in preventing statutorily barred persons from purchasing firearms. As you know, the military failed to send pertinent information relating to Devin P. Kelley's domestic violence related convictions to the National Instant Criminal Background Check System (NICS) at the FBI. The Senate is taking this matter seriously, and I am sure you are as well.

Upon our initial review, it appears that the Department of Defense (DOD) is not classifying domestic violence related offenses as such, but rather as assaults of varying degrees. We have been told that the DOD simply categorizes all such offenses as Article 128 "assaults" and sends them to the FBI through the National Crime Information Center (NCIC) or the Interstate Identification Index (III) but not the NICS Indices database.

As of 2016 (the latest data available), the DOD has reported only *one* misdemeanor crime of domestic violence (MCDV) to the NICS Indices since 2007. In the event that Article 128 assaults are classified as felonies, it has only reported one of those as well. Confusingly, the DOD does appear to report to the NICS database individuals who were dishonorably discharged from military service, which – like domestic violence-related convictions – carries with it a prohibition on purchasing firearms. Since 2007, the DOD has reported nearly 11,000 dishonorable discharges directly to the NICS Indices.

DOD maintains that it has been, nevertheless, reporting domestic-violence related convictions and assaults to NCIC or III. To verify this, a request was made to the FBI to disclose the number of DOD submissions to any of the background check databases. To our surprise, the FBI told Senator Flake that it cannot determine the number of dispositions DOD agencies have placed into NCIC or III, and suggested we review the NICS Indices, whose deficiency is now well-established.

We would like the Department to clarify how it identifies cases of domestic violence. Moreover, how does the Department ensure those cases are properly reported to the National Instant Criminal Background Check System, including any and all of its databases. We therefore ask you respond to the following questions:


1. How does the Department ensure that domestic violence related charges are forwarded to the NICS system?
 - a. By what process does the Department do this?
 - b. To whom, exactly, does the Department forward these convictions?
 - c. How exactly does the Department categorize these convictions when it sends them?
 - i. Does the Department distinguish between kinds of Article 128 assaults in reporting?
 - ii. Is it the view of the Department that all Article 128 assaults provide a statutory bar for firearm ownership?
2. How many assaults that would qualify as an MCDV in civilian courts has the Department reported to each separate database (NICS, NCIC, and III) since modern record keeping with the NICS system began in 2007? Please provide a total number reported to each individual database.
3. How many assaults that would qualify as a felony in civilian courts has the Department reported to NICS (through NICS, NCIC, or III) since modern record keeping with the NICS system began in 2007? Please provide a total number reported to each individual database.
4. How many assaults that would qualify as a general misdemeanor in civilian courts has the Department reported to NICS (through NICS, NCIC, or III) since modern record keeping with the NICS system began in 2007? Please provide a total number reported to each individual database.
5. Why does the Department report dishonorable discharges to the NICS Indices, while apparently reporting domestic violence-related convictions to separate databases?

Our offices stand ready to work with you and your team to ensure the Department reports all applicable cases to the National Instant Criminal Background Check System. We must all work together to prevent mass shootings from occurring again.

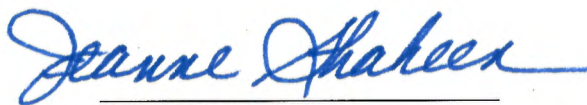
Sincerely,



JEFF FLAKE
U.S. Senator



MARTIN HEINRICH
U.S. Senator



JEANNE SHAHEEN
U.S. Senator